

Indiana Public Defender Commission Meeting Minutes

December 12, 2007

Interim Chairman Bettye Lou Jerrel called the business meeting to order at 2:20 p.m. Commission members in attendance were Susan Carpenter, David Hensel, Bettye Lou Jerrel, Peter D. Nugent, Mark W. Rutherford, and Rep. Phil Hoy. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Hon. Daniel F. Donahue, Sen. Timothy S. Lanane, Sen. Joseph C. Zakas, and Rep. Amos Thomas.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis, Dave Cook, Marion County Chief Public Defender, Vicki Ursulskis, Chief Counsel for the MCPDA and Ray Casanova, Felony Supervisor at MCPDA.

Chairman Jerrel reminded the members that the last item on today's agenda is an election for chairman of the commission.

Meeting Minutes: Interim Chairman Jerrel presented the meeting minutes from the September 26, 2007 Public Defender Commission meeting for approval. Mark Rutherford moved for approval of the minutes as presented and Peter Nugent seconded the motion. The vote was unanimous in favor of approval.

Task Force to Study Indigent Defense in Indiana: Judge Donohue reported (by telephone) that he had sent a reminder, through Dave Remondini, State Court Deputy Director, to Chief Justice Shepard regarding the task force to study indigent defense in Indiana. Commission members discussed the report titled "Streamlining Local Government" prepared by the Governor's Commission on Local Government Reform. The report recommends replacing county control and funding of public defense with a state agency.

Annual Report for Fiscal Year 2006-2007: Susan Carpenter moved to approve the report as prepared and Mark Rutherford seconded the motion. The vote was unanimous in favor of approval. Deborah Neal reported that the newly elected chairman would prepare the cover memorandum for the annual report, and then it will be distributed.

Financial Status of the Public Defense Fund: Deborah Neal reported that after the January 1, 2008 distribution into the Public Defense Fund, and the payment of December 12, 2007 claims for \$3,929,232, plus salaries and overhead, the Fund balance will be \$3,262,860. The 3rd quarter non-capital claims will be reimbursed at the full 40%; however, a prorating of claims is anticipated at the next commission meeting for the 2007 4th quarter requests.

State Funding: Larry Landis reported on the efforts of the Indiana Public Defender Council and the Chief Public Defenders Association to obtain more state funding for public defense. The conclusion of these groups is that direct state funding would result in a better per capita funding for public defense and that they needed to work on proposing and developing an infrastructure for delivering a state defense program to the counties. In the interim, Mr. Landis reported that the IPDC is also working on several possible changes to the present system, such as, increasing reimbursements on non-capital expenses to

50%, adding types of cases that are not currently reimbursed, and having chief public defender salaries be a state expense like judges and prosecutors' salaries to give property tax relief to the counties.

Betty Lou Jerrel asked Larry Landis to clarify the role of this commission in a possible state program. Mr. Landis said the commission would still exist and he recommends that the number of members be expanded. The commission members would answer to the appointing authority, as they do now. Mrs. Jerrel asked if the IPDC and Chief Defenders have examined how much money is needed for a state agency and how the funds will be raised. Larry Landis said the group does not yet have an answer, however, he promises to provide the commission with a copy of whatever is proposed by the group, if and when that happens.

Peter Nugent asked if there are states that could be models for Indiana. Larry Landis stated that Wisconsin and Colorado have fully funded state programs and their systems are the traditional hierarchal-top-down programs. Mr. Landis stated that he believed Louisiana and Georgia have systems that might fit better with Indiana's "home rule" concept.

Request for 50% Reimbursement in Capital Cases: The commission addressed claims for 50% reimbursement in capital cases as follows:

INDIANA PUBLIC DEFENDER COMMISSION Reimbursement Requests in Capital Cases December 12, 2007			
COUNTY	DEFENDANT		TOTAL
Allen	Rios 1*		\$47,310.63
	Rios 2*		\$24,455.25
Fulton	Baker 1		\$988.55
	Baker 2		\$1,161.60
	Baker 3		\$3,334.05
	Baker 4		\$1,506.51
	Baker 5		\$8,282.10
	Baker 6		\$427.20
Lake	Azania		\$7,767.56
Madison	Baer		\$1,396.14
Marion	Adams		\$696.00
	Allen 1****		\$11,184.37
	Turner 1		\$18,155.28
	Turner 2		\$4,829.53

Parke	Cottrell	\$19,830.81	
Pike	Harbison	\$1,502.68	
Spencer	Ward	\$55,627.75	
Vanderburgh	Wilkes	\$62,403.76	
Vigo	Walker 1	\$1,464.55	
	Walker 2	\$5,744.05	
	Walker 3	\$1,701.70	
TOTAL		\$279,770.07	
** <i>Rios</i> I reduced by \$31,592.36 for charges incurred prior to death sentence request and charges not related to public defense			
*** <i>Rios</i> 2 reduced by \$4,118.62 for charges not related to public defense			
**** <i>Allen</i> 1 \$2,409.60 filed late and subtracted from request. Notice sent to Marion County.			

State vs. Rios: Staff Counsel, Jeff Wiese, discussed the Allen County death penalty case of *State v. Rios*. Originally, he notified Allen County that their request for reimbursement of defense claims in this case were in jeopardy due to three factors; untimely filing of claims, incorrect compensation under Criminal Rule 24 paid to lead and co-counsel, and caseloads of lead and co-counsel being in excess of limits set by CR24. Mr. Wiese stated that the compensation issue had been resolved, but the commission needed to decide if the claims in *Rios* should be paid despite Allen County not adhering to the 120-day reporting rule and the alleged excess public defense felony caseloads of lead and co-counsel.

Regarding the 120-day limit for requesting reimbursement in capital cases, a letter from Charles Leonard, Allen County Chief Public Defender, was distributed to the commission members. Mr. Leonard asks that the commission forgive the county's oversight on timely requesting reimbursement and stated that it had been a long time between capital cases in Allen County and the present Auditor's staff was not familiar with all the requirements in making a reimbursement request. Mr. Leonard's letter also states that the county will adhere to the 120-day reporting rule in the future.

Regarding the 20-felony caseload restriction in Criminal Rule 24, staff counsel reminded the commission that in two Indiana Supreme Court Cases, *Wrinkles* and *Prowell*, the Court ruled that the excessive caseloads of the public defenders serving as lead and co-counsel in these death penalty cases was ineffective assistance of counsel. Susan Carpenter stated that her office (State Public Defender) handled these cases in post-conviction, and that after the Supreme Court ruling, Vanderburgh County had to repay the Fund all the reimbursement monies previously given to the county. Ms. Carpenter stated there should be a method for auditing the felony caseloads of capital qualified public defenders when they take a death penalty case, instead of waiting until the end of the case and, where a violation is found, asking for a return of the funds.

Commission members discussed the 20-felony limit imposed by CR24, and whether that included private felony cases in addition to public cases. Larry Landis stated his belief that CR24 only covers public defense felony cases. He stated it was put in place to prevent judges from overloading public defenders with cases while they were handling a capital case, noting that attorneys can control their private inventory of cases, but a public defender has no control over how many public cases are assigned

to him/her. Jeff Wiese stated his reading of the rule says the limit is 20 open felony cases without differentiating between public and private cases.

Larry Landis spoke on behalf of Charles Leonard and reported that Mr. Leonard wanted the commission to know that his office did monitor the felony caseloads of lead and co-counsel in *Rios*, and that the attorneys were in compliance with CR24.

David Hensel said the 120-day issue is not a problem because Allen County sent a satisfactory explanation of how the oversight occurred. The commission has forgiven this infraction in the past. Mr. Hensel made the motion that staff counsel Jeff Wiese contact Charles Leonard and request a written statement certifying both public defenders were in compliance with CR24's restriction to the 20-felony cases during the time the death penalty was on the table in the *State v. Rios* case; when the commission receives this certification, the claim will be paid. Susan Carpenter seconded the motion. The vote was unanimous in favor of reimbursing 50% of the defense costs in *State v. Rios* after staff counsel receives certification.

As to all other capital claims submitted for payment, David Hensel made the motion to pay the capital claims as recommended and Susan Carpenter seconded the motion. The vote was unanimous in favor of approval.

Claims for 40% Reimbursement in Non-Capital Cases: The commission addressed the following counties' 3rd quarter claims for 40% reimbursement of non-capital expenses:

INDIANA PUBLIC DEFENDER COMMISSION						
Third Quarter Requests for Reimbursements in Non-Capital Cases						
12/12/2007						
COUNTY	2007 Period Covered	Total Expenditure	Adjustment for Non- Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbrsed
ADAMS	7/1-9/30	\$57,056.87	\$15,438.92	27%	\$41,617.95	\$16,647.18
ALLEN	7/1-9/30	\$739,457.78	\$40,737.91	6%	\$698,719.87	\$279,487.95
BENTON	7/1-9/30	\$3,867.00	\$892.38	23%	\$2,974.62	\$1,189.85
BLACKFORD	7/1-9/30	\$34,970.75	\$6,945.00	20%	\$28,025.75	\$11,210.30
CARROLL	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
CLARK	7/1-9/30	\$122,157.95	\$22,967.45	19%	\$99,190.50	\$39,676.20
DECATUR	7/1-9/30	\$32,372.07	\$13,742.86	42%	\$18,629.21	\$7,451.68
FAYETTE	7/1-9/30	\$66,249.30	\$23,166.93	35%	\$43,082.37	\$17,232.95
FLOYD	7/1-9/30	\$125,148.68	\$24,593.50	20%	\$100,555.18	\$40,222.07
FOUNTAIN	7/1-9/30	\$36,875.46	\$9,833.46	27%	\$27,042.00	\$10,816.80
FULTON	7/1-9/30	\$57,688.27	\$19,928.68	35%	\$37,759.59	\$15,103.84
GRANT	7/1-9/30	\$181,953.00	\$17,092.37	9%	\$164,860.63	\$65,944.25
GREENE	7/1-9/30	\$90,765.02	\$12,699.44	14%	\$78,065.58	\$31,226.23
HANCOCK	7/1-9/30	\$110,140.32	\$32,949.38	30%	\$77,190.94	\$30,876.38
HENRY	7/1-9/30	\$93,028.62	\$12,696.40	14%	\$80,332.22	\$32,132.89
HOWARD	7/1-9/30	\$339,049.73	\$51,218.78	15%	\$287,830.95	\$115,132.38
JASPER	7/1-9/30	\$51,602.67	\$18,039.96	35%	\$33,562.71	\$13,425.08

JAY	7/1-9/30	\$46,068.88	\$12,668.94	27%	\$33,399.94	\$13,359.98
JENNINGS	7/1-9/30	\$50,869.20	\$13,873.42	27%	\$36,995.78	\$14,798.31
KNOX	7/1-9/30	\$136,607.91	\$42,466.64	31%	\$94,141.27	\$37,656.51
KOSCIUSKO	7/1-9/30	\$101,767.75	\$32,902.36	32%	\$68,865.39	\$27,546.16
LAKE	7/1-9/30	\$834,736.84	\$2,405.58	0%	\$832,331.26	\$332,932.50
LAPORTE	7/1-9/30	\$126,616.56	\$25,972.63	21%	\$100,643.93	\$40,257.57
MADISON	7/1-9/30	\$353,750.09	\$35,093.81	10%	\$318,656.28	\$127,462.51
MARION	7/1-9/30	\$4,492,827.84	\$1,060,570.38	24%	\$3,432,257.46	\$1,372,902.98
MARTIN	7/1-9/30	\$11,250.60	\$2,707.80	24%	\$8,542.80	\$3,417.12
MIAMI	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
MONROE	7/1-9/30	\$278,713.98	\$45,490.63	16%	\$233,223.35	\$93,289.34
MONTGOMERY	7/1-9/30	\$56,823.75	\$18,080.61	32%	\$38,743.14	\$15,497.26
NEWTON	7/1-9/30	\$0.00	\$0.00	0%	\$0.00	\$0.00
NOBLE	7/1-9/30	\$77,553.25	\$14,836.10	19%	\$62,717.15	\$25,086.86
OHIO	7/1-9/30	\$14,049.05	\$3,177.80	23%	\$10,871.25	\$4,348.50
ORANGE	7/1-9/30	\$60,241.14	\$13,943.50	23%	\$46,297.64	\$18,519.06
PARKE	7/1-9/30	\$23,596.15	\$5,634.90	24%	\$17,961.25	\$7,184.50
PERRY	7/1-9/30	\$54,963.00	\$8,827.00	16%	\$46,136.00	\$18,454.40
PIKE	7/1-9/30	\$56,988.79	\$24,841.27	44%	\$32,147.52	\$12,859.01
PULASKI	7/1-9/30	\$97,283.26	\$20,736.14	21%	\$76,547.12	\$30,618.85
RUSH	7/1-9/30	\$40,814.82	\$10,904.72	27%	\$29,910.10	\$11,964.04
SCOTT	7/1-9/30	\$61,598.90	\$15,399.73	25%	\$46,199.17	\$18,479.67
SHELBY	7/1-9/30	\$78,712.01	\$9,835.39	12%	\$68,876.62	\$27,550.65
SPENCER	7/1-9/30	\$18,037.90	\$1,699.50	9%	\$16,338.40	\$6,535.36
STEBEN	7/1-9/30	\$64,661.26	\$11,884.92	18%	\$52,776.34	\$21,110.54
ST. JOSEPH	7/1-9/30	\$505,489.56	\$59,578.25	12%	\$445,911.31	\$178,364.52
SULLIVAN	7/1-9/30	\$28,775.23	\$9,535.48	33%	\$19,239.75	\$7,695.90
SWITZERLAND	7/1-9/30	\$57,618.71	\$21,380.53	37%	\$36,238.18	\$14,495.27
TIPPECANOE	7/1-9/30	\$370,194.38	\$159,910.45	43%	\$210,283.93	\$84,113.57
UNION	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
VANDEBURGH	7/1-9/30	\$575,287.72	\$104,957.56	18%	\$470,330.16	\$188,132.06
VERMILLION	7/1-9/30	\$25,262.07	\$9,137.34	36%	\$16,124.73	\$6,449.89
VIGO	7/1-9/30	\$358,529.73	\$74,638.16	21%	\$283,891.57	\$113,556.63
WABASH	7/1-9/30	\$41,999.97	\$7,478.35	18%	\$34,521.62	\$13,808.65
WARREN	7/1-9/30	\$9,617.02	\$4,506.00	47%	\$5,111.02	\$2,044.41
WASHINGTON	7/1-9/30	\$110,375.75	\$8,609.34	8%	\$101,766.41	\$40,706.56
WELLS	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
WHITE	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
WHITLEY	7/1-9/30	\$45,539.89	\$11,822.86	26%	\$33,717.03	\$13,486.81
TOTAL		\$11,409,606.45	\$2,228,451.51	20%	\$9,181,154.94	\$3,672,461.98

Before the commission voted on payment of the quarterly claims, the following issues were discussed:

- a. Amended 2nd Quarter Reimbursement from Marion County. Deborah Neal explained that in November 2007, Marion County Public Defender Agency reported to staff counsel that their 2nd quarter expenses were overstated by approximately \$850,000. MCPDA was

asked to send an amended 2nd Quarter Request for Reimbursement, and reimburse the Fund \$128,650.79. Marion County immediately complied with this request; the repayment allowed all other counties in the program to receive additional reimbursement for the 2nd quarter of 2007. The previous prorating at 37.3% for reimbursement of 2nd quarter requests was adjusted to a 39.8% reimbursement.

- b. Summary of Response to 90-Day Notice. Deborah Neal reminded the commission that caseload changes in the counties that received the 90-day notice of non-compliance would not be significant until these counties are into their 2008 fiscal year.
- c. Rush County: Deborah Neal reported on her meeting in Rushville, Indiana with the Rush County Public Defender Board President, both superior and circuit court judges, and a public defense attorney. The county has developed a plan to come into compliance by hiring a full-time public defense attorney.
- d. Whitley County: After meeting with the judges and county officials of Whitley County, Deborah Neal reports that Whitley County does not intend to alter their public defense program to come into compliance with commission standards. Ms. Neal issued a 90-day notice letter to the county, to which the county did not respond.
- e. Grant County: Ms. Neal met with judges, county officials and public defense attorneys in Marion, Indiana to discuss their public defense program. The county is working to alter its delivery of defense services and intends to come into compliance with commission standards. Another meeting with county commissioners and council members is scheduled for January 2008, and Deborah Neal has been invited to attend and answer questions regarding the Fund.
- f. Appeals: Staff counsel recommends that a study of public defense appeals be conducted to determine if there is significant difference in the amount of time allotted to trial appeals as opposed to sentencing appeals. If so, then each category should be given a different weight, and maximum caseload standards. Larry Landis reported that some counties are already studying this issue and he will inform the commission when the data is finalized.

Interim Chairman Jerrel asked for a motion regarding payment of the non-capital reimbursement requests totaling \$3,672,461.98. Susan Carpenter made the motion to pay the non-capital reimbursement requests and David Hensel seconded the motion. The motion passed unanimously.

Dave Cook announced he had submitted his resignation as Chief Public Defender of Marion County and wanted to address this group to impress upon the commission members how important the work is that they do, and how important the reimbursements they offer counties is to advancing the case of indigent defense. He reported that the MCPDA has grown from a staff of 35 in 1995, to 220 full time people, 160 full time attorneys, and another 100 contract attorneys. Mr. Cook stated that the MCPDA has moved to a new professional office space, and that their budget is approaching \$20 million next year.

Policy Matters:

Supplemental Public Defense Fund: Commission staff compiled information received from counties that have a Supplemental Public Defense Services Fund. Eighty-five of 92 counties responded to the request for information. Of those 85, three counties reported having no supplemental public defense services fund; three counties reported keeping a separate fund for each court; and 11 counties reported using the fund for public defense salaries. Other common uses for this fund are public defense secretary

and investigator salaries and benefits, travel expenses and mileage reimbursement, continuing legal education seminars, legal periodicals, books and research, additional benefits for public defenders such as life insurance, transcript services, and office supplies and equipment. Larry Landis reported he would share this information with the chief public defenders.

Standard H - \$60 Hourly Rate for Assigned Counsel: The hourly rate paid for public defense attorneys in the 92 counties was reported as follows: four counties pay \$0 – because they only pay by contract, not hourly; two counties \$50 per hour; one county \$55; 49 counties pay \$60; seven counties pay \$65 and seven pay \$70; 11 counties pay \$75 per hour and one county pays \$78.50; there are four counties paying \$80, three paying \$85, one pays \$90, one pays \$95 and one pays \$110.00. Only the counties in the public defense program that receive reimbursement from the Fund are obligated by Standard H to pay a minimum \$60 per hour for public defense. This information was compiled in the event the commission wishes to recommend an increase in the Standard H rate for compensation for assigned counsel in non-capital cases. The rate was last adjusted on March 8, 1995. As the results show, many counties already pay a rate that exceeds the Standard H rate.

Election of Chairman: Interim Chairman Bettye Lou Jerrel asked for nominations for the position of Chairman of the Public Defender Commission. Peter Nugent nominated Mark Rutherford for Chairman and David Hansel seconded that nomination. The members unanimously elected Mark Rutherford as Chairman of the Public Defender Commission.

The next meeting of the commission is March 26, 2008 at the new location, 30 South Meridian Street, 5th floor, Indianapolis, Indiana.

The meeting adjourned at 3:55 p.m.

Bettye Lou Jerrel, Interim Chairman

Date